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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,935	02/12/2004	Thomas E. Zion	56689.US	5479
408	7590	12/14/2005	EXAMINER	
LUEDEKA, NEELY & GRAHAM, P.C. P O BOX 1871 KNOXVILLE, TN 37901			BALSIS, SHAY L	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 12/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/777,935

Applicant(s)

ZION, THOMAS E.

Examiner

Shay L. Balsis

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 6/15/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Claim 12, which states that the cleaning members diverge at an angle of 3.5 degrees is not supported in the specification. Please correct.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 11 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 11 and 12 recite the limitation "a second angle" in line 2. There is insufficient antecedent basis for this limitation in the claim. There is not a "first angle" limitation in the claim from which 11 and 12 depend. Therefore, it is improper to use "second angle" when there is not a "first angle" proceeding it.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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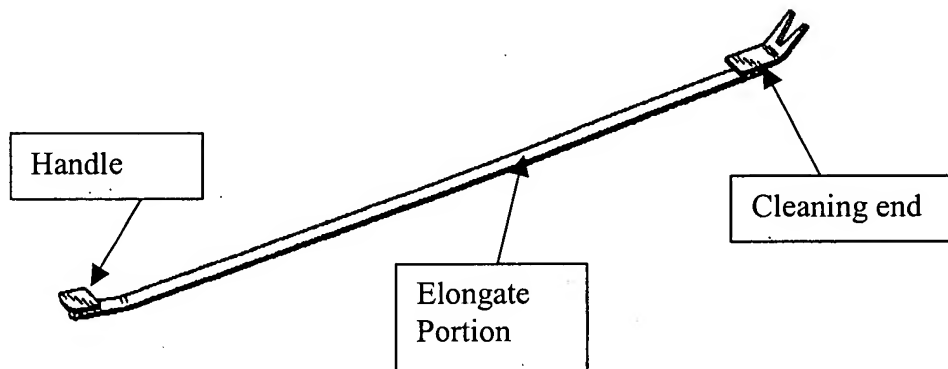
Claims 1, 3, 9 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Rostron (USPN D386859).

Rostron teaches a grill cleaning tool comprising a cleaning end with distal and proximal portions. The distal portion of the cleaning ends have a first and second diverging cleaning members, each cleaning member has an inner edge, an outer edge and a terminal end. The proximal portion of the cleaning end is attached to an elongated portion.

With regards to claim 3, the elongate portion has a circular cross-section (figure 7).

With regards to claim 9, the cleaning end is disposed at a first angle to the elongate portion (figure 5).

With regards to claim 18, there is a handle connected to the opposite end of the elongate portion (see figure below).



Claims 1, 3, 7, 9, 14, 16 and 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Heuck (USPN 4112537).

Heuck teaches a grill cleaning tool comprising a cleaning end (16) with distal and proximal portions. The distal portion of the cleaning ends have a first and second diverging

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cleaning members (19), each cleaning member has an inner edge, an outer edge and a terminal end. The proximal portion of the cleaning end is attached to an elongated portion.

With regards to claim 3, the elongate portion has a circular cross-section (figure 1).

With regards to claims 7 and 19, the outer edge of the cleaning member is curved having a radius and extends from the proximal portion to the terminal end (figure 2).

With regards to claim 9, the cleaning end is disposed at a first angle to the elongate portion (figure 1).

With regards to claims 14 and 16, the outer edge and inner edge of the cleaning members transition through a curve having a radius to the terminal end of each cleaning member (figure 2).

With regards to claim 18, there is a handle connected to the opposite end of the elongate portion (upper part of the elongate portion is considered the handle on figure 1).

With regards to claim 20, the first and second cleaning members diverge at an acute angle (figure 2, reference 19).

Claims 1, 3, 7, 9, 14, 16 and 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Floyd (USPN 6485074).

Floyd teaches a grill cleaning tool comprising a cleaning end (32) with distal and proximal portions. The distal portion of the cleaning ends have a first and second diverging cleaning members (52, 54), each cleaning member has an inner edge, an outer edge and a terminal end. The proximal portion of the cleaning end is attached to an elongated portion (12).

With regards to claim 3, the elongate portion has a circular cross-section (figure 1).

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With regards to claims 7 and 19, the outer edge of the cleaning member is curved having a radius and extends from the proximal portion to the terminal end (figure 5).

With regards to claim 9, the cleaning end is disposed at a first angle to the elongate portion (figure 4).

With regards to claims 14 and 16, the outer edge and inner edge of the cleaning members transition through a curve having a radius to the terminal end of each cleaning member (figure 5).

With regards to claim 18, there is a handle connected to the opposite end of the elongate portion (20).

With regards to claim 20, the first and second cleaning members diverge at an acute angle (figure 2, reference 66).

Claims 1, 3, 7, 9, 14, 16 and 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Andersen (USPN D234743).

Anderson teaches a grill cleaning tool comprising a cleaning end with distal and proximal portions. The distal portion of the cleaning ends have a first and second diverging cleaning members, each cleaning member has an inner edge, an outer edge and a terminal end. The proximal portion of the cleaning end is attached to an elongated portion.

With regards to claim 3, the elongate portion has a circular cross-section.

With regards to claims 7 and 19, the outer edge of the cleaning member is curved having a radius and extends from the proximal portion to the terminal end.

With regards to claim 9, the cleaning end is disposed at a first angle to the elongate portion.

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With regards to claims 14 and 16, the outer edge and inner edge of the cleaning members transition through a curve having a radius to the terminal end of each cleaning member.

With regards to claim 18, there is a handle connected to the opposite end of the elongate portion.

With regards to claim 20, the first and second cleaning members diverge at an acute angle.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2, 4-6, 10-13 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rostron in view of Gardner case law.

Rostron teaches all the essential elements of the claimed invention however fails to teach the exact dimensions of the cleaning end and the elongated portion. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Rostron so that

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dimensions matched the claimed invention. Since the only difference between Rostron and the claims is a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than Rostron's device, the claimed device is not patentably distinct from Rostron's device. *In re Gardner*, 225 USPQ 232.

Claims 2, 4-6, 8, 10-13, 15, 17 and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heuck or Floyd or Andersen all in view of Gardner case law.

Heuck or Floyd or Andersen teaches all the essential elements of the claimed invention however fails to teach the exact dimensions of the cleaning end and the elongated portion. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Heuck or Floyd or Andersen so that dimensions matched the claimed invention. Since the only difference between Heuck or Floyd or Andersen and the claims is a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than Heuck or Floyd or Andersen's device, the claimed device is not patentably distinct from Heuck or Floyd or Andersen's device. *In re Gardner*, 225 USPQ 232.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shay L. Balsis whose telephone number is 571-272-1268. The examiner can normally be reached on 7:30-5:00 M-Th, alternating F.

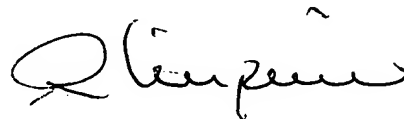
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on 571-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



SLB
12/9/05



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